



# WIRRINGA BAIYA

## ABORIGINAL WOMEN'S LEGAL CENTRE INC

Wirringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or who have been victims of violence.

22 February 2013

Attn: Ms Seckin Ungur  
Sexual Assault Working Group Secretariat  
Health and Justice Branch  
Strategic Policy and Coordination Group  
Department of Premier and Cabinet  
Level 38 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Ms Ungur,

**RE: CONSENT TO RELEASE EVIDENCE COLLECTED AS PART OF A FORENSIC MEDIAL  
EXAMINATION – OPTIONS FOR REFORM**

### **The work of our Centre**

Wirringa Baiya Aboriginal Women's Legal Centre (Wirringa Baiya) is a New South Wales statewide community legal centre for Aboriginal women, children and young people. The focus of our service is to assist victims of violence, primarily domestic violence, sexual assault and child sexual assault.

Over the sixteen (16) years of our operation we have given advice and support to many hundreds of women and children who have been victims of violence. We have also acted for many clients in applications for statutory victims compensation for the violence they have endured. Furthermore, we have provided numerous community legal education workshops to community members in New South Wales, in both regional and metropolitan locations.

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Phone: (02) **9569 3847** Free call: **1800 686 587** Fax: (02) 9569 4210 [www.wirringabaiya.org.au](http://www.wirringabaiya.org.au)

Wirringa Baiya is a non-profit organisation managed by Aboriginal women.

ABN: 60 382 206 441



In addition to our day-to-day advice and casework services, we also provide legal advice clinics in several outreach locations including in women's correctional centres and community centres. We also provide support to women through our involvement with the Women's Domestic Violence Court Advocacy Service (WDVCAS) at the Downing Centre and Waverly Court and have some exposure in this capacity to the process of obtaining and enforcing ADVOs.

### **Feedback on the options discussed**

*Given our experience, we believe that when a victim comes to deciding whether she wishes to release the SAIK to the police, she have as many options available to her as possible. Therefore she should have both the option for an anonymous SAIK released to police for analysis, **in addition** to a long term holding option (3 – 12 months).*

As stated above, we work exclusively with Aboriginal women who are the victims of violence. For the majority of our clients who have experienced sexual assault, the offender was known to the victim. Further, for the majority of our clients who have experienced sexual assault have never undergone a Sexual Assault Investigation Kit (SAIK). We believe this is strongly linked to the fact the offender was known to them.

A crucial factor effecting Aboriginal women's reporting behavior is the fact the offender is often known to them. Many of our clients have reported to us that they delayed in disclosing or reporting to police because the perpetrator was a family member; a brother, cousin, uncle, family friend or partner. This is in line with current statistics, that state in 53 per cent of cases of violence the offender was known to the victim.<sup>1</sup> This presents the victim with two unique barriers to reporting. Firstly they must have access to the support necessary to get themselves and their children to safety. This may involve leaving a long-term domestic violence relationship, their family and community behind. Secondly, once an allegation has become public, as often happens within small Aboriginal communities, the victim must deal with an often hostile community response.

Once a woman had completed a SAIK, she may have reservations about forwarding the results to the police as she is still living in close proximity to the offender. Many of our clients have

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<sup>1</sup> Keel M., 2004, *Family Violence and sexual assault in Indigenous communities: "Walking the talk"* Australian Institute of Family Studies, Accessed 21 February 2013 at <http://www.aifs.gov.au/acssa/pubs/briefing/b4.html>

been too frightened to take action for fear of retribution by the offender. It is vital that the SAIK procedure allows the victim the opportunity to ensure her physical safety, as well as the safety of her children before taking action. Three (3) months is simply not enough time for a woman to relocate herself and her family so she may feel confident and safe in taking action.

A second critical barrier to the release of SAIK results by Aboriginal women is the often hostile community responses to allegations of sexual assault. Not only must a victim find safety from the offender but often they must seek it from their community. Aboriginal women have reported fears of retaliatory violence from the perpetrator and his supporters, fear of being shunned by the community and shame about wanting to report the violence because of the community's silence on the matter.<sup>2</sup> These community restraints on reporting must be taken into account when examining the three (3) month reporting option. If a victim initially discloses, one negative social reaction, may stop them from disclosing again for an extended period of time. They must be given time to both relocate and receive support in taking action against the perpetrator.

Furthermore, many of our clients report experiencing racism and discrimination from services including the NSW Police Force and Hospitals which serve as a further disincentive to the release of their SAIK results. Aboriginal women have reported a fear of not being believed by the police, a fear of the police themselves, a belief that punishment for the perpetrator will be inadequate and that the police will take excessive time to convict a guilty perpetrator.<sup>3</sup> Moreover, given the disproportionately high rates on Aboriginal men and women in prison, many Aboriginal women hold a strong distrust of the criminal justice system. Sadly these are common barriers for Aboriginal women seeking assistance which may affect her decision to release her results immediately.

Finally, access to support services is also a critical factor in whether a victim will disclose. Women who have undergone the trauma of sexual assault need an extended period of time to begin to deal with the physical, psychological and emotional impact of the assault. This commonly includes post-traumatic stress disorder. Where the offender is known to the victim, the psychological impact is compounded by the fact that her feeling of safety and trust within

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<sup>2</sup> Putt J. & Taylor N. 2007 "Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia" *Trends and Issues in Crime and Criminal Justice*, No. 345, Australian Institute of Criminology, Canberra, p. 4

<sup>3</sup> Ibid. p.4



her circle of family and friends has been shattered. Culturally appropriate support and counseling is vital for Aboriginal women dealing with not only the trauma from the assault, but transgenerational trauma<sup>4</sup>. For many of our clients who live in regional areas, accessing free, long term, high quality counseling is difficult. If and when they are able to obtain this support, it is a long process in working through the trauma resulting from sexual assault.

In conclusion, we do not agree that three (3) months is an adequate holding time for the SAIK. In order for our clients to overcome many of the barriers stated above, it is necessary they have the option to hold the SAIK for **up to 12 months** as elected by them. Victims of sexual assault must be given time to find a safe place, to begin recovery and to understand the reporting process. We agree this could increase the percentage of victims who go on to release the SAIK after choosing the holding option. We also agree that this would give victims more time to seek any further assistance or advice they might need to make an informed, freely given decision. We believe the necessary policies and procedures can be introduced to ensure updated consent is given and contact with the victim is maintained.

Further we agree with providing the option to have an anonymous SAIK released to Police for analysis, in addition to the 3 – 12 month holding option. We agree this option may assist victims to decide whether they want to make a formal report. We acknowledge the potential risks of re-traumatisation and issues around contacting the victim where the DNA profile has been linked to a serious crime unrelated to the victim's matter. However we believe they can be addressed by implementing policies and procedures that ensure the victim is able to make an informed decision about her consent.

We believe a **combination of these two (2) options** will best give women a sense of control over decision-making around whether to go ahead and report to police. We agree that being able to make this decision outside the time of the immediate crisis is an "important part of victims' regaining a sense of control over their lives particularly given the sense of powerlessness they experience during and immediately following the actual assault itself."<sup>5</sup> However we also believe that giving victims time is about giving them the opportunity to

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<sup>4</sup>Atkinson J. et.al, 2010 *Trauma, Transgenerational Transfer and Effects on Community Wellbeing in Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, 2010, Accessed 21 February 2013 at [http://aboriginal.childhealthresearch.org.au/media/54847/working\\_together\\_full\\_book.pdf](http://aboriginal.childhealthresearch.org.au/media/54847/working_together_full_book.pdf)

<sup>5</sup> Olle L, 2005 'Mapping health sector and interagency protocols on sexual assault' in Issues, Vol 2, Australian Institute of Family Studies, p 6, accessed 21 February 2013 at <http://www.aifs.gov.au/acssa/pubs/issue/i2.html>

secure theirs and their children's physical safety and to begin recovery. We believe these are the foundations for a victim making a confident and informed decision about the release of their SAIK.

**To conclude, our recommendations are as follows:**

**Recommendation 1**

Extend the option to hold the SAIK for up to 12 months.

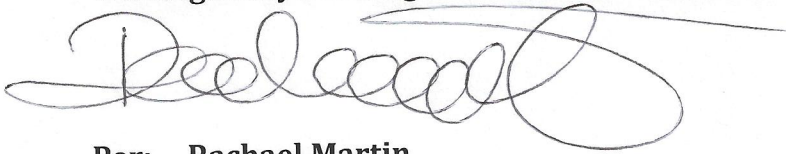
**Recommendation 2**

Provide the option to have an anonymous SAIK released to Police for analysis, in addition to the 3 – 12 month holding option.

If you have any questions about this submission please contact Rachael Martin of this office on (02) 9569 3847.

Yours faithfully,

**Wirringa Baiya Aboriginal Women's Legal Centre**

A handwritten signature in blue ink, appearing to read 'Rachael Martin', with a long horizontal flourish extending to the right.

**Per: Rachael Martin**  
**Principal Solicitor**